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May 15, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**BY HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: 

In the Matter of Amendment of Section 73.202(b) Table of Allotments FM Broadcast Stations (Freeport and Cedarville, Illinois) MM Docket No. 97-67; RM-8996; RM-9079
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Dear Mr. Caton:

Transmitted herewith on behalf of Highland Broadcasting Company are an original and four (4) copies of its "Reply Comments of Highland Broadcasting Company" as directed to the Chief, Allocations Branch.

Should any additional information be required, please contact this office.

Very truly yours,

  
Henry E. Crawford  
Counsel for  
Highland Broadcasting Company

cc: John A. Karousos  
Sharon P. McDonald  
James K. Edmondson, Esq.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Freeport and Cedarville, Illinois)

MM Docket No. 97-67

RM-8996

RM-9079

To: Chief, Allocations Branch

**REPLY COMMENTS OF HIGHLAND BROADCASTING COMPANY**

Highland Broadcasting Company ("Highland"), by counsel, pursuant to 47 CFR §§1.415 and 1.420 respectfully submits its *Reply Comments of Highland Broadcasting Company* in response to the *Counterproposal* filed on April 7, 1997, by Atlantis Broadcasting Co., L.L.C. ("Atlantis"). In support thereof, the following is stated:

**I. INTRODUCTION**

1. On February 14, 1997, the Commission released its Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter. The NPRM adopted Highland's December 17, 1996 proposal to allot Channel 295A at Freeport, Illinois as that community's third local FM service.

2. Highland filed comments in support of the allocation on April 7, 1997. Highland reaffirmed its commitment to apply for Channel 295A in the event that it is allocated to Freeport.

3. On April 7, 1997, Atlantis filed its Counterproposal, proposing that Channel 295A be assigned to Cedarville, Illinois. As is clear from the certificate of service attached to the Counterproposal, Atlantis failed to serve either Highland or its counsel with its pleading.

4. On April 30, 1997, the Commission released a public notice that established May 15, 1997 as the date for filing reply comments to the counterproposal.

5. On May 14, 1997, one day before the deadline for filing reply comments was to expire, Atlantis submitted a "Supplement to Counterproposal" in which it admitted that it failed to serve counsel as a result of its own "inadvertence."<sup>1</sup> A copy of this pleading along with a copy of the original Counterproposal was faxed to undersigned counsel.

## **II. ARGUMENT**

### **A. The Atlantis Counterproposal Should Be Dismissed For Failure To Conform To The Commission's Rules**

6. The obligation to serve counsel for the petitioner in a Commission rulemaking is long established in the Commission's Rules. 47 CFR §1.420. That obligation was also restated in the Appendix that was attached to the NPRM. Furthermore, where service of a document is required, that service must be performed on or before the day on which the document is filed. 47 CFR §1.47(b). In no event can the service requirement be met by serving the

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<sup>1</sup> Supplement to Counterproposal, p. 1, ¶1.

document on opposing counsel by fax on the day before the reply is due. This is particularly so where, as here, no good cause has been shown for the dereliction.

7. The Commission has routinely dismissed counterproposals that are not filed in accordance with the service rules. Bay City, Brenham, Cameron, 8 FCC Rcd 1552 (Allocations Branch, 1993) (Channel 285C1 upgrade at Rosenberg, Texas, dismissed for failure to serve petitioner with a copy of the counterproposal); Dushore, Pennsylvania, 5 FCC Rcd 2022 (1990) (counterproposal not considered where not properly served). No departure from this strong precedent is warranted here.

8. Highland has been prejudiced by Atlantis' failure to timely serve its Counterproposal. Highland has had to expend additional resources as a direct result of Atlantis' neglect. The smooth operation of the Commission's allocation proceedings requires that the service rules be followed. Where they are not, the offending counterproposal must be dismissed.

9. In sum, Atlantis has failed to follow the Commission's service rules and has failed to make any showing of good cause for that failure. Consequently, the Atlantis Counterproposal cannot be considered in this proceeding and must be dismissed.

**B. Atlantis Has Failed To Show That Cedarville Is A Community For Allotment Purposes**

10. Notwithstanding the failure to serve its Counterproposal in a proper fashion, Atlantis has additionally failed to demonstrate that Cedarville constitutes a community for purposes of the table of allotments.

11. According to the showing provided by Atlantis in its Counterproposal, Cedarville has a 1990 population of 791.<sup>2</sup> As indicia of community status, Atlantis offers only that Cedarville has a post office and zip code.<sup>3</sup>

12. As the Commission has noted on many occasions, Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "...among the several states and communities." The Commission has defined "communities" as geographically identifiable population groups. In the absence of recognizable community facts, the petitioner or counter-proponent must present the Commission with sufficient information to demonstrate that such a place has the social, economic, or cultural indicia to qualify it as a community for allotment purposes.<sup>4</sup> Although Atlantis asserts that Cedarville is an incorporated place, it has not shown that it constitutes a community for allotment purposes. Based on Atlantis' showing, Cedarville may be absolutely devoid of the customary factors associated with determining community status, such as a library, schools, shopping centers, churches, a newspaper and social or civic organizations and some form of government.<sup>5</sup> Therefore, Atlantis has

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<sup>2</sup> Atlantis cites to the *Rand McNally Commercial Atlas & Marketing Guide* (1996 Edition). However, the 1997 edition shows a previous census population of 766 and a revised census population of 751. *Rand McNally Commercial Atlas & Marketing Guide* (1997 Edition), p. 315. Consequently, the Cedarville population appears to be in decline.

<sup>3</sup> Counterproposal, p. 2, ¶2.

<sup>4</sup> See, e.g., *Oak Grove, FL*, 5 FCC Rcd 3774 (1990); *Hannibal, OH*, 5 FCC Rcd 3315 (1990); and *Statenville, GA*, 5 FCC Rcd 2685 (1990).

<sup>5</sup> See *Searles Valley, CA*, 3 FCC Rcd 5221 (1988); see also, *Naples, FL*, 41 RR 2d 1549 (1977).

failed to show that Cedarville is a community for purposes of the FM table of allotments.

13. It is now clear why Beaufort County Broadcasting Co., 94 FCC 2d 572 (1983) is inapposite to the present case. There, the preferred city had a growing population of nearly 3,000 persons and had been established as a community for more than four hundred years. Beaufort County Broadcasting Co., 94 FCC 2d at 576, ¶9. Here we are faced with a declining population of less than 800 persons and a community that has not been shown to possess any indications of social or commercial life.

14. In view of the fact that Atlantis has failed to demonstrate that Cedarville is a community for purposes of the table of allotments, its Counterproposal cannot be adopted.

### **III. CONCLUSION**

15. Atlantis has not played by the rules. It admittedly failed to timely serve its Counterproposal on undersigned counsel. Instead, it faxed a copy one-day before the deadline for filing replies. Atlantis has failed to show good cause for its conduct. Moreover, Atlantis has not sufficiently demonstrated that Cedarville is a community for purposes of the FM table of allotments. Consequently, in view of these fatal deficiencies, the Atlantis Counterproposal cannot be accepted and must be dismissed.


**WHEREFORE**, Highland Broadcasting Company respectfully requests that Channel 295A at Freeport, Illinois be assigned as that community's third local FM transmission service.

May 15, 1997

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Respectfully Submitted,

Highland Broadcasting Company

By:   
Henry E. Crawford  
Its Attorney

**CERTIFICATE OF SERVICE**

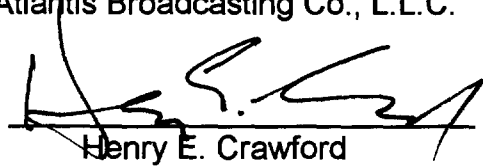
I, Henry E. Crawford, do hereby certify that copies of the foregoing Reply  
Comments of Highland Broadcasting Company have been served by United  
States mail, postage prepaid this 15th day of May, 1997 upon the following:

\*John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Washington, D.C. 20554

\*Ms. Sharon P. McDonald  
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\*Hand Delivered

  
Henry E. Crawford